

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

KERN COUNTY SUPERINTENDENT OF
SCHOOLS.

OAH Case No. 2016040211

REVISED ORDER OF
DETERMINATION OF SUFFICIENCY
OF CORRECTED DUE PROCESS
COMPLAINT

On March 30, 2016, Parents on behalf of Student filed a Due Process Hearing Request with the Office of Administrative Hearings naming Kern County Superintendent of Schools. On March 31, 2016, Student filed a Corrected Due Process Hearing Request (complaint) with OAH. On April 15, 2016, Kern filed a Notice of Insufficiency as to Student's complaint.

APPLICABLE LAW

The named parties to a due process hearing request have the right to challenge the sufficiency of the complaint. (20 U.S.C. § 1415(b) & (c).) The party filing the complaint is not entitled to a hearing unless the complaint meets the requirements of title 20 United States Code section 1415(b)(7)(A).

A complaint is sufficient if it contains: (1) a description of the nature of the problem of the child relating to the proposed initiation or change concerning the identification, evaluation, or educational placement of the child, or the provision of a free appropriate public education to the child; (2) facts relating to the problem; and (3) a proposed resolution of the problem to the extent known and available to the party at the time. (20 U.S.C. § 1415(b)(7)(A)(ii)(III) & (IV).) These requirements prevent vague and confusing complaints, and promote fairness by providing the named parties with sufficient information to know how to prepare for the hearing and how to participate in resolution sessions and mediation. (See H.R.Rep. No. 108-77, 1st Sess. (2003), p. 115; Sen. Rep. No. 108-185, 1st Sess. (2003), pp. 34-35.)

The complaint provides enough information when it provides "an awareness and understanding of the issues forming the basis of the complaint." (Sen. Rep. No. 108-185, 1 A request for a due process hearing under Education Code section 56502 is the due process complaint notice required under title 20 U.S.C. section 1415(b)(7)(A). 2, *supra*, at p. 34.) The pleading requirements should be liberally construed in light of the broad remedial purposes of the IDEA and the relative informality of the due process hearings

it authorizes. (*Alexandra R. ex rel. Burke v. Brookline School Dist.* (D.N.H., Sept. 10, 2009, CIV. 06-CV-0215-JL) 2009 WL 2957991[nonpub. opn.]; *Escambia County Bd. of Educ. v. Benton* (S.D. Ala. 2005) 406 F.Supp.2d 1248, 1259-1260; *Sammons v. Polk County School Bd.* (M.D. Fla., Oct. 28, 2005, 8:04CV2657T24EAJ) 2005 WL 2850076 [nonpub. opn.]; but cf. *M.S.-G v. Lenape Regional High School Dist. Bd. of Educ.* (3d Cir. 2009) 306 Fed.Appx. 772, 775 [nonpub. opn.].) Whether the complaint is sufficient is a matter within the sound discretion of the Administrative Law Judge. (*Assistance to States for the Educ. of Children with Disabilities & Preschool Grants for Children with Disabilities* (Aug. 14, 2006) 71 FR 46,540-46541, 46699.)

DISCUSSION

Student's corrected complaint is 43 pages and contains three issues. Student alleges that Kern denied her a free appropriate public education during school years 2014-2015 and 2015-2016 by failing to (a) consider Student as disabled and in need of special education services when it found Student ineligible to re-enroll in the program at Valley Oaks Charter School; (b) offer Student an Individualized Education Program reasonably calculated to render her education benefit in response to her inability to benefit from her IEP as of September 2014; and (c) file for due process hearing upon Student's family refusal to consent to the May 23, 2104 IEP provisions for placement. The corrected complaint contains detailed factual contentions from pages two to 42 in support of the three issues.

The facts alleged in Student's corrected complaint are sufficient to put Kern on notice of the issues forming the basis of the complaint. Student's corrected complaint identifies the issues and adequate related facts about these issues to permit Kern to respond to the corrected complaint and participate in a resolution session and mediation.

ORDER

1. The Corrected Complaint is deemed sufficient under Title 20 United States Code section 1415(c)(2)(C) and Education Code section 56502, subdivision (d)(1).

2. All mediation, prehearing conference, and hearing dates in this matter are confirmed.

DATE: April 20, 2016

/s/

ROBERT HELFAND
Administrative Law Judge
Office of Administrative Hearings